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Chapter V
Protection of persons in the event of disasters

Contents

Paragraphs *Page*

A. Introduction.....

B. Consideration of the topic at the present session .....

C. Text of the draft articles on the protection of persons in the event of disasters adopted by the Commission on first reading.....

1. Text of the draft articles.....

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A. Introduction

1. From the sixtieth (2008) to sixty-fifth sessions (2013), the Commission considered the topic on the basis of six reports[1] submitted by the Special Rapporteur dealing with, *inter alia*, the main legal questions to be covered, the scope of the topic *ratione materiae*, *ratione personae* and *ratione temporis*, the definition of "disaster" for purposes of the topic, the basic duty to cooperate, the principles that inspire the protection of persons in the event of disasters, the question of the role of the affected State, the responsibility of the affected State to seek assistance where its national response capacity is exceeded, the duty of the affected State not to arbitrarily withhold its consent to external assistance, the right to offer assistance of the international community, the conditions for the provision of assistance, the question of the termination of assistance, prevention in the context of the protection of persons in the event of disasters, including disaster risk reduction, prevention as a principle of international law, and international cooperation on prevention. The Commission also had before it a memorandum by the Secretariat, focusing primarily on natural disasters (A/CN.4/590 and Add.1 to 3) and providing an overview of existing legal instruments and texts applicable to a variety of aspects of disaster prevention and relief assistance, as well as of the protection of persons in the event of disasters. The Commission further had before it a set of written replies submitted by the Office for the Coordination of Humanitarian Affairs of the United Nations Secretariat and the International Federation of Red Cross and Red Crescent Societies to the questions addressed to them by the Commission in 2008.

2. At its sixty-second session (2010), the Commission provisionally adopted draft articles 1 (Scope), 2 (Purpose), 3 (Definition of disaster), 4 (Relationship with international humanitarian law) and 5 (Duty to cooperate).[2] At the sixty-third session (2011), the Commission provisionally adopted draft articles 6 (Humanitarian principles in disaster response), 7 (Human dignity), 8 (Human rights), 9 (Role of the affected State), 10 (Duty of the affected State to seek assistance) and 11 (Consent of the affected State to external assistance).[3] At its sixty-fifth session (2013), the Commission provisionally adopted draft articles 5 *bis* (Forms of cooperation), 5 *ter* (Cooperation for disaster risk reduction), 12 (Offers of assistance), 13 (Conditions on the provision of external assistance), 14 (Facilitation of external assistance), 15 (Termination of external assistance) and 16 (Duty to reduce the risk of disasters).[4]

B. Consideration of the topic at the present session

3. At the present session, the Commission had before it the seventh report of the Special Rapporteur (A/CN.4/668 and Corr.1 and Add.1) dealing with the protection of relief personnel and their equipment and goods, and included a proposal for draft article 14 *bis* (protection of relief personnel, equipment and goods).[5] The report further considered the

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[1] See A/CN.4/598, A/CN.4/645 and Corr.1, A/CN.4/629, A/CN.4/643 and Corr.1, A/CN.4/652, and A/CN.4/662.

[2] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10), para. 330.

[3] *Ibid., Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 228.

[4] *Ibid., Sixty-eighth Session, Supplement No. 10* (A/68/10), para. 61.

[5] Draft article 14 *bis* read as follows:

Protection of relief personnel, equipment and goods

The affected State shall take all necessary measures to ensure the protection of relief personnel, equipment and goods present in its territory for the purpose of providing external

relationship of the draft articles being developed and other rules, and included proposals for draft articles 17 (Relationship with special rules of international law),[6] 18 (Matters related to disaster situations not regulated by the present draft articles)[7] and 19 (Relationship to the Charter of the United Nations).[8] The report also contained a proposal for draft article 3 *bis* (Use of terms).[9]

4. The Commission considered the seventh report at its 3198th to 3201st meetings, from 5 to 8 May 2014.

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assistance.

[6] Draft article 17 read as follows:

Relationship with special rules of international law

The present draft articles do not apply to the extent that they are inconsistent with special rules of international law applicable in disaster situations.

[7] Draft article 18 read as follows:

Matters related to disaster situations not regulated by the present draft articles

The applicable rules of international law continue to govern matters related to disaster situations to the extent that they are not regulated by the present draft articles.

[8] Draft article 19 read as follows:

Relationship to the Charter of the United Nations

The present draft articles are without prejudice to the Charter of the United Nations.

[9] Draft article 3 *bis* read as follows:

Use of terms

For the purposes of the present articles:

(a) "Affected State" means the Stat e upon whose territory persons or property are affected by a disaster;

(b) "Assisting State" means a State providing assistance to an affected State at its request or with its acceptance;

(c) "Other assisting actor" refers to an international organization, non-governmental organization, or any other entity or person, external to the affected State, which is engaged in disaster risk reduction or the provision of disaster relief assistance;

(d) "External assistance" refers to relief personnel, equipment and goods, and services provided to an affected State by assisting States or other assisting actors, with the objective of preventing, or mitigating the consequences of disasters or meeting the needs of those affected by a disaster;

(e) "Equipment and goods" includes supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles and other objects necessary for the provision of disaster relief assistance and indispensable for the survival and the fulfilment of the essential needs of the victims of disasters;

(f) "Relevant non-governmental organization" means any organization, including private and corporate entities, other than a State or governmental or intergovernmental organization, working impartially and with strictly humanitarian motives, which because of its nature, location or expertise, is engaged in disaster risk reduction or the provision of disaster relief assistance;

(g) "Relief personnel" means specialized personnel, including military personnel, engaged in the provision of disaster relief assistance on behalf of an assisting State or other assisting actor, as appropriate, having at their disposal the necessary equipment and goods;

(h) "Risk of disasters" means the probability of harmful consequences or losses with regard to human life or health, livelihood, property and economic activity, or damage to the environment, resulting from a disaster.

5. At its 3201st meeting, on 8 May 2014, the Commission referred draft articles 3 *bis*, 14 *bis*, 17, 18 and 19 to the Drafting Committee.

6. The Commission considered and adopted the report of the Drafting Committee on draft articles 1 [1] to 21 [4], at the 3213th meeting, held on 30 May 2014. It, accordingly, adopted a set of 21 articles on the protection of persons in the event of disasters on first reading (sect. C.1 below).

7. At its ... and ... meetings, on ... and ... August 2014, the Commission adopted the commentaries to the draft articles on the protection of persons in the event of disasters on first reading (sect. C.2 below).

8. At its ... meeting, on ... 2014, the Commission decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft articles (see sect. C below), through the Secretary-General, to Governments, competent international organizations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2016. The Commission also indicated that it would welcome comments and observations on the draft articles from the United Nations Office for the Coordination of Humanitarian Affairs and the United Nations Office for Disaster Risk Reduction, by the same date.

9. At its ... meeting, on 3 August 2009, the Commission expressed its deep appreciation for the outstanding contribution of the Special Rapporteur, Mr. Eduardo Valencia Ospina, which had enabled the Commission to bring to a successful conclusion its first reading of the draft articles on the on the protection of persons in the event of disasters.

C. Text of the draft articles on the protection of persons in the event of disasters adopted by the Commission on first reading

1. Text of the draft articles

10. The text of the draft articles adopted by the Commission on first reading is reproduced below.

Protection of persons in the event of disasters

Article 1 [1][10]
Scope

The present draft articles apply to the protection of persons in the event of disasters.

Article 2 [2]
Purpose

The purpose of the present draft articles is to facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.

Article 3 [3]
Definition of disaster

[10] The numbers of the draft articles, as previously provisionally adopted by the Commission, are indicated in square brackets.

"Disaster" means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.

Article 4
Use of terms

For the purposes of the present draft articles:

(a) "affected State" means the State in the territory or otherwise under the jurisdiction or control of which persons, property or the environment are affected by a disaster;

(b) "assisting State" means a State providing assistance to an affected State at its request or with its consent;

(c) "other assisting actor" means a competent intergovernmental organization, or a relevant non-governmental organization or any other entity or individual external to the affected State, providing assistance to that State at its request or with its consent;

(d) "external assistance" means relief personnel, equipment and goods, and services provided to an affected State by assisting States or other assisting actors for disaster relief assistance or disaster risk reduction;

(e) "relief personnel" means civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance or disaster risk reduction;

(f) "equipment and goods" means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles and other objects for disaster relief assistance or disaster risk reduction.

Article 5 [7]
Human dignity

In responding to disasters, States, competent intergovernmental organizations and relevant non-governmental organizations shall respect and protect the inherent dignity of the human person.

Article 6 [8]
Human rights

Persons affected by disasters are entitled to respect for their human rights.

Article 7 [6]
Humanitarian principles

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.

Article 8 [5]
Duty to cooperate

In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves, and with the United Nations and other competent intergovernmental organizations, the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations.

Article 9 [5 *bis*]
Forms of cooperation

For the purposes of the present draft articles, cooperation includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources.

Article 10 [5 *ter*]
Cooperation for disaster risk reduction

Cooperation shall extend to the taking of measures intended to reduce the risk of disasters.

Article 11 [16]
Duty to reduce the risk of disasters

1. Each State shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters.

2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems.

Article 12 [9]
Role of the affected State

1. The affected State, by virtue of its sovereignty, has the duty to ensure the protection of persons and provision of disaster relief and assistance on its territory.

2. The affected State has the primary role in the direction, control, coordination and supervision of such relief and assistance.

Article 13 [10]
Duty of the affected State to seek external assistance

To the extent that a disaster exceeds its national response capacity, the affected State has the duty to seek assistance from among other States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations, as appropriate.

Article 14 [11]
Consent of the affected State to external assistance

1. The provision of external assistance requires the consent of the affected State.

2. Consent to external assistance shall not be withheld arbitrarily.

3. When an offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer.

Article 15 [13]
Conditions on the provision of external assistance

The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law, and the national law of the affected State. Conditions shall take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Article 16 [12]
Offers of external assistance

In responding to disasters, States, the United Nations, and other competent intergovernmental organizations have the right to offer assistance to the affected State. Relevant non-governmental organizations may also offer assistance to the affected State.

Article 17 [14]
Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance regarding, in particular:

(a) civilian and military relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and

(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Article 18
Protection of relief personnel, equipment and goods

The affected State shall take the appropriate measures to ensure the protection of relief personnel, equipment and goods present in its territory for the purpose of providing external assistance.

Article 19 [15]
Termination of external assistance

The affected State and the assisting State, and as appropriate other assisting actors, shall consult with respect to the termination of external assistance and the modalities of termination. The affected State, the assisting State, or other assisting actor wishing to terminate shall provide appropriate notification.

Article 20
Relationship to special or other rules of international law

The present draft articles are without prejudice to special or other rules of international law applicable in the event of disasters.

Article 21 [4]
Relationship to international humanitarian law

The present draft articles do not apply to situations to which the rules of international humanitarian law are applicable.